

**BRIGHAM CITY APPEAL AUTHORITY
NOVEMBER 14, 2007 – MEETING MINUTES**

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| PRESENT: | George Berkley Don Peart Marilyn Peterson Jaye Poelman | Chairman Board Member Board Member (5:49 p.m.) Alternate |
| ALSO PRESENT: | Jeff Leishman | Associate Planner |
| EXCUSED: | Martha Shoun Jess Palmer | Vice Chairman Alternate |

AGENDA:

1. APPROVAL OF THE AGENDA
2. APPROVAL OF THE NOVEMBER 8, 2006 MEETING MINUTES
3. APPROVAL OF THE JANUARY 10, 2007 MEETING MINUTES
4. APPROVAL OF THE MARCH 14, 2007 MEETING MINUTES
5. APPROVAL OF THE OCTOBER 10, 2007 MEETING MINUTES
6. REVIEW APPEAL AUTHORITY BYLAWS

Meeting convened at 5:34 p.m.

APPROVAL OF THE AGENDA

MOTION: A motion was made by Don Peart to approve the agenda as written. The motion was seconded by Jaye Poelman and passed unanimously.

APPROVAL OF THE NOVEMBER 8, 2006 MEETING MINUTES

On line 128 the word rational should be changed to rationale for clarity of meaning.

MOTION: A motion was made by Don Peart to approve the minutes of the November 8, 2006 meeting as amended. The motion was seconded by Jaye Poelman and passed unanimously.

APPROVAL OF THE JANUARY 10, 2007 MEETING MINUTES

George Berkley commented that the Appeal Authority consists of five people and noted that Marilyn Peterson was late to the meeting and it was noted on line 114 that she was present and would participate but would not vote. He recommended moving her name from the 'Present' heading to the 'Also Present' heading with the note that she is a board member and that she did participate but did not vote so it could not be disputed that there were six people voting ~~and~~ instead of five.

MOTION: A motion was made by Don Peart to approve the minutes of the January 10, 2007 meeting as amended. The motion was seconded by Jaye Poelman and passed unanimously.

APPROVAL OF THE MARCH 14, 2007 MEETING MINUTES

MOTION: A motion was made by Jaye Poelman to approve the minutes of the March 14, 2007 meeting as written. The motion was seconded by Don Peart and passed unanimously.

APPROVAL OF THE OCTOBER 10, 2007 MEETING MINUTES

MOTION: A motion was made by Don Peart to continue approval of the October 10, 2007 meeting minutes until two or three of the members who attended that meeting are present to approve them.

Discussion: Jeff Leishman commented that the City Recorder, Mary Kate Christensen, stated that regardless of whether a member was in attendance at a particular meeting or not, each member is asked to vote and not abstain. It is each member's duty to vote for or against. Mr. Berkley commented that Mr. Peart had been in attendance at that meeting and could verify that the action noted in the minutes had taken place and was correctly stated in those minutes; Mr. Peart concurred. Mr. Berkley proposed to continue to evaluate the minutes, make comments and approve if they deem it necessary.

Mr. Berkley commented that in several places the word 'table' is used instead of the word 'continue'. Table may have been the word used in making the motion but he wondered if that word should be corrected to the proper terminology since the intent was to put it off until the next meeting to evaluate, which is what 'table' used to mean but now the word 'continue' is the appropriate word. Mr. Leishman replied that the word 'table' could remain but suggested inserting the word 'continue' next to it.

Mr. Berkley recommended that on lines 31 and 254 the word 'continue' be placed in parentheses next to the word 'table' and on line 251 the word 'continued' be placed in parentheses next to the word 'tabled'.

MOTION: A motion was made by George Berkley to approve the minutes of October 10, 2007 with the following additions: On line 31 next to 'table' add in parentheses 'continue'; on line 251 next to the word 'tabled' add in parentheses 'continued' and on line 254 next to 'table' add in parentheses 'continue'. The motion was seconded by Don Peart and passed unanimously.

REVIEW APPEAL AUTHORITY BYLAWS

Mr. Berkley thanked Mr. Leishman and the Staff and said he thought they did an excellent job in taking the preliminary ideas that the Appeal Authority had recommended to them.

Marilyn Peterson joined the meeting at 5:49 p.m. Mr. Berkley informed her that the items on the agenda had been approved and they were currently reviewing the bylaws. The members commented that they received their packet information a week after the previous meeting, which was unc customary and unexpected.

Mr. Leishman stated that he reviewed the existing bylaws and wanted to make a clarification. On page 2, number 3, Order of Business it states: "A quorum of the Board of Adjustment consists of five members". That will be changed to three members in the new version. It is important to note that on page 5, Bylaws and Rules, it states that these rules may be amended at any meeting of the Board, held not less than 13-

days after written notice of the proposal to amend the rules. A majority vote of a full quorum is required to amend bylaws. Mr. Leishman said the bylaws could be discussed at this meeting but could not be acted upon without the majority of the full quorum of five, as the current bylaws are still governing this body. Adjustments and recommendations can be made but they cannot officially be approved. Mr. Leishman commented that if the constitution, of how this board operates and conducts business, is going to be changed, then it makes sense to have the full board in attendance.

A quorum is a minimum number of members needed to do business and can be misconstrued to mean that if there are only three or four members in attendance there is not a quorum and business cannot be conducted. The Appeal Authority is made up of five members and a maximum of five members can sit in on a hearing. It takes three of the five members to approve a motion in favor of the applicant. Mr. Leishman said the existing bylaws have probably been in error by stating that a quorum is five and he is trying to clarify that a quorum to conduct business in the Appeal Authority is three. To amend the bylaws, there must be five to vote and a majority of three to approve the amendment.

Mr. Berkley read the first paragraph of the bylaws that stated the Appeal Authority shall consist of five members and whatever number of alternate members the Mayor considers appropriate. Ms. Peterson suggested clarifying that only five members would sit, whether they are appointed members or alternates sitting in for absent members. Mr. Leishman suggested, for the last paragraph on number 3, to have it read 'However, in no case can the Appeal Authority proceed with less than three voting members present or more than five voting members.' Ms. Peterson suggested defining 'voting members'. The way it is written there can be two alternate members included in the number of voting members but there must also be at least one regular member in that group. Ms. Peterson also suggested adding a statement that if the chairman and vice chairman are gone that the three remaining would take over in accordance with their appointment date or some such order so it is know who will conduct. Mr. Berkley commented that in the previous meeting a motion was made to elect a temporary chairman. That standard is already outlined in the bylaws. In number 4, Order of Business, the maximum number of voting members will be listed as five during any agenda item.

In E, it is listed to listen to the petitioner, City Planner and any private citizen. In the past, Mr. Leishman has introduced the application. Mr. Berkley stated that it helps for Mr. Leishman to introduce it because he has more background on the rules and regulations, what it takes to pass and good guidelines before the petitioner comes forward with the case. He was questioning whether or not the City Planner should be the first one to discuss the matter. Ms. Peterson commented that it is up to the petitioner to prove that they have a case and if the City Planner sets the stage, then it is taken out of their hands. She felt the petitioner should be the one to present their case and to have the case presented by the City Planner at the onset would give the impression that the board is not impartial and the decision predetermined. Mr. Leishman said he helps the petitioner to the extent that he explains what the Code is after. If their explanations are close to what is expected in the Code and he thinks it can be clarified at the table he will leave it be but if it is blatantly inadequate he will help them. He tries to be as neutral as he can be. He lets them present their facts and he presents the City's position. He could tell them they have no chance and are wasting their money but he does not want to do that; he wants them to feel like they have their day in court to explain their position.

In State Code 10-9a-705, the ~~appellant~~ applicant has the burden of proving that the Land Use Authority erred or that their variance or appeal has substance to it. That is fairly difficult for a novice who has no idea of the standards under which it is going to be reviewed. Staff does try to supplement them or help the board make that determination but the bottom line is, it is the petitioner's day in court and is the one that needs to present the facts. They are not coached by Staff on what to say but are allowed to understand the standards. Staff also tries to explain to the petitioner any questions they may have. The petitioner really should have their say at the onset. The board members may ask questions or make comment during any stage of the agenda item. The order in which this section is currently written is sufficient.

In regards to voting on minutes, choosing to abstain must be an available option but it is the hope that it will not be used. It is recommended to vote on the minutes even if a member was not in attendance at that particular meeting. If after reviewing the minutes a board member has an issue with them and is

unable to attend the meeting in which they will be voted upon for approval, they ought to call or email Staff with those things they have issue with. It would be inappropriate to allow absentee voting. All the members, including the alternates, receive the same packet of information for each meeting.

There were not five voting members of the Board present at this meeting to vote on the bylaws and Mr. Berkley suggested continuing them and incorporating the changes that were talked about. Mr. Leishman commented that the only change he had listed was on page 2 of the bylaws, line 4, Order of Business, 'maximum number of voting members shall be five members during any agenda item'.

Motion: A motion was made by Don Peart to continue the bylaws to the next meeting or meeting where there are five voting members present, with the changes that were made. The motion was seconded by Marilyn Peterson and passed unanimously.

Mr. Berkley commented that in the Brigham City Code there were several places where it still reads 'Board' when it should read 'Appeal Authority'. He realized it was the City Council's responsibility to change that but he wanted to bring that to someone's attention. Mr. Leishman went through the City Code and explained some sections in the City Code under Appeal Authority.

In heading D, it clarifies appeals to the Appeal Authority, explaining what the basis for an appeal is. An appeal is a check and balance against those administering the Land Use Code. An appeal can be made by any person or entity adversely affected by a zoning decision, administering or interpreting a zoning ordinance.

Mr. Leishman gave an example of when Special Exception had been used in regards to the Fence Ordinance. The Special Exception is used where there is a special need such as in the case of a tennis court, swimming pool or other such condition that needs special treatment. Special Exceptions are different from Variances or Appeals and are already established.

Mr. Berkley suggested that 'D' be separated since it includes two items and would better coincide with the State Code if it were done.

In the past, Nonconforming Uses had been approved on a regular basis so the City Council decided it would be appropriate for the Staff to look at those. Mr. Leishman read from the code the groupings of nonconforming structures that the City Council has authorized the Zoning Administrator to determine. Staff acts in behalf of the Appeal Authority for these situations creating findings of fact and documents based on the preset conditions.

Ms. Peterson asked why the last appeal came to them instead of just being handled by Staff. Mr. Leishman explained that it had to go before the Appeal Authority because the City had declared that property as illegal nonconforming and the Appeal Authority had the ability to transfer it from illegal nonconforming to legal nonconforming.

Mr. Leishman reemphasized the concerns of the City Attorney that the Appeal Authority, their decision making, needs to give evidence, good findings of fact, based on the evidence that is presented and not upon public outcry so as to give the Attorney something to defend in case of an appeal to the District Court. If an Appeal Authority decision is appealed in District Court, the minutes of the Appeal Authority meeting will be what is reviewed for that appeal; no additional testimony will be accepted.

The new bylaws were reviewed by the City Attorney and he said everything looked good. Ms. Peterson asked if there would be a new form indicating the type of appeal that is before them that lists all the conditions that are being addressed. Variances are what they have been used to and with the new changes it would be helpful to have those changes listed on the application. It would be helpful in knowing how to address those categories.

Motion: A motion was made by Don Peart to adjourn. The motion was seconded by Jaye Poelman and passed unanimously.

The meeting adjourned at 6:42 p.m.

This certifies that the minutes of November 14, 2007 are a true and correct copy as approved by the Appeal Authority on December 12, 2007.

Signed: _____
Jeffery R Leishman - Secretary